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13 UNITED STATES DISTRICT COURT

14 NORTHERN DISTRICT OF CALIFORNIA

15 SAN FRANCISCO DIVISION

16 HOGAN LOVELLS US LLP,

17 Case No.

18 Petitioner,

19 **HOGAN LOVELLS US LLP'S PETITION**  
20 **TO COMPEL ARBITRATION**  
21 **PURSUANT TO 9 U.S.C. § 4**

22 v.  
23 CONVERSANT INTELLECTUAL  
24 PROPERTY MANAGEMENT INC.,

25 Respondent.

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HOGAN LOVELLS US LLP'S PETITION TO COMPEL ARBITRATION PURSUANT TO 9 U.S.C. § 4  
Case No.

1 Petitioner Hogan Lovells US LLP (“Hogan Lovells”) respectfully petitions this Court,  
 2 pursuant to the Federal Arbitration Act, 9 U.S.C. § 1, *et seq.*, to compel Respondent Conversant  
 3 Intellectual Property Management LLP (“Conversant”) to arbitrate its threatened professional  
 4 negligence claim as part of the arbitration proceeding initiated by Hogan Lovells, which relates to  
 5 the same representation. The requested relief is in aid of arbitration and intended to preserve and  
 6 not to displace the parties’ agreement to arbitrate. This petition is supported by the  
 7 accompanying Memorandum of Points and Authorities and the Declaration of Khari J. Tillery in  
 8 support thereof.

9 **THE PARTIES**

10 1. Petitioner Hogan Lovells US LLP is Hogan Lovells’ law practice in the Americas.  
 11 Hogan Lovells US LLP is a District of Columbia LLP with offices throughout the Americas,  
 12 including three in California (San Francisco, Silicon Valley, and Los Angeles). Hogan Lovells  
 13 US LLP has no offices in Canada. The representation relevant to the dispute between Hogan  
 14 Lovells was based out of Hogan Lovells’ San Francisco office, which is located at 3 Embarcadero  
 15 Center, Suite 1500, San Francisco, CA 94111.

16 2. Respondent Conversant, formerly known as MOSAID Technologies Inc., is an  
 17 intellectual property management company headquartered in Ottawa, Canada, and with its  
 18 principal place of business located at 11 Hines Road, Suite 203, Ottawa, ON, Canada K2K 2X1.  
 19 Conversant also has offices in Plano, Texas, and in Tokyo, Japan.

20 **JURISDICTION AND VENUE**

21 3. This Court has subject matter jurisdiction over this petition under 28 U.S.C.  
 22 § 1332(a) because there is complete diversity of citizenship between the parties, and the amount  
 23 in controversy exceeds \$75,000, exclusive of costs and interests.

24 4. This Court has personal jurisdiction over Conversant because Conversant entered  
 25 into a contract with Hogan Lovells that Hogan Lovells accepted in California. Conversant was  
 26 specifically represented by a group of Hogan Lovells partners based in Hogan Lovells’ San  
 27 Francisco office during the representation of Conversant. Additionally, Conversant is a repeat  
 28 litigant in the Northern District of California. *See, e.g., MOSAID Technologies, Inc. v. Micron*

1 *Technology, Inc.*, 5:08-CV-04494-JF (N.D. Cal.); *MOSAID Technologies, Inc. v. Powerchip*  
 2 *Semiconductor Corp.*, 5:09-cv-01838-JF (N.D. Cal.); *Promos Technologies Inc. v. MOSAID*  
 3 *Technologies, Inc.*, 5:06-CV-05788-JF (N.D. Cal.); *Infineon Tech. North. Am. Corp. v. MOSAID*  
 4 *Technologies, Inc.*, No. 5:02-CV-5772-JF (N.D. Cal.).

5. Venue is proper in this district under 18 U.S.C. § 1391, including because  
 6 Conversant is subject to personal jurisdiction in this district, and because a substantial part of the  
 7 alleged events or omissions giving rise to the parties' dispute occurred in this district.

#### 8 **FACTUAL BACKGROUND**

9. On or about March 9, 2011, Hogan Lovells entered into a retainer agreement with  
 10 Conversant (the "Retainer Agreement"), pursuant to which Hogan Lovells agreed "to represent  
 11 [Conversant] in licensing and litigation matters related to [Conversant's] patent portfolio." *See*  
 12 Declaration of Khari J. Tillery in Support of Hogan Lovells US LLP's Petition to Compel  
 13 Arbitration Pursuant to 9 U.S.C. § 4 ("Tillery Decl."), Ex. 1 (Retainer Agreement).

14. The Retainer Agreement was sent to Conversant from San Francisco by a Hogan  
 15 Lovells partner based in Hogan Lovells' San Francisco office. The Retainer Agreement was  
 16 signed on behalf of Hogan Lovells on or about March 8, 2011, and on information and belief, it  
 17 was signed on behalf of Conversant in Canada by its then-General Counsel on or about March 9,  
 18 2011. *See id.*

19. Section 10 of the Retainer Agreement is entitled "**Arbitration of Disputes**"  
 20 (emphasis in original). This section extends to "any disputes or claims of any type or nature with  
 21 respect to services rendered pursuant to this engagement letter, including without limitation,  
 22 disputes or claims related to legal fees for such services." *Id.* This section also contains a clear  
 23 waiver of the parties' right to a jury trial: "The parties recognize that, by agreeing to arbitration,  
 24 they will be waiving any right to a jury trial and the extensive discovery rights typically permitted  
 25 in judicial proceedings." *Id.* The entire, unabridged text of the "Arbitration of Disputes" section  
 26 reads:

27. The parties agree to final binding arbitration regarding any disputes or claims of  
 28 any type or nature with respect to services rendered pursuant to this engagement  
 letter, including without limitation, disputes or claims related to legal fees for

1 such services. The parties recognize that, by agreeing to arbitration, they will be  
 2 waiving any right to a jury trial and the extensive discovery rights typically  
 3 permitted in judicial proceedings. Unless otherwise agreed to by the parties or  
 4 required by applicable jurisdictional requirements, the UNCITRAL Arbitration  
 Rules shall govern the arbitration, the American Arbitration Association shall be  
 the appointing authority, and the number of arbitrators shall be one.

5 9. The Retainer Agreement, including Section 10, remained the operative agreement  
 6 controlling the terms of Hogan Lovells' representation of Conversant for the duration of the  
 7 representation.

8 10. On information and belief, Conversant acquired a patent portfolio from a company  
 9 called SercoNet in 2009, and subsequently engaged in licensing negotiations with Cisco Systems.  
 10 Inc. ("Cisco"), relating to that patent portfolio. Those negotiations reached an impasse, and in  
 11 August 2010 Cisco filed a declaratory judgment action in the United States District Court for the  
 12 District of Delaware ("Delaware Action"), seeking a judgment of non-infringement and invalidity  
 13 as to Conversant's asserted patents.

14 11. Following the execution of the Retainer Agreement in March 2011, a group of  
 15 partners in Hogan Lovells' San Francisco office represented Conversant in the Delaware Action  
 16 against Cisco. Prior to that time, these partners had represented Conversant against Cisco while  
 17 at a different law firm in San Francisco.

18 12. In May 2011, Conversant filed a concurrent patent infringement complaint against  
 19 Cisco with the U.S. International Trade Commission, asserting six out of the ten patents at issue  
 20 in the Delaware litigation and seeking to preclude Cisco from importing infringing products into  
 21 the United States (the "ITC Investigation"). Hogan Lovells represented Conversant in this action  
 22 as well primarily from its San Francisco office.

23 13. The ITC Investigation settled in April 2012. In July 2012, Hogan Lovells  
 24 withdrew as counsel for Conversant in the Delaware litigation, which remained pending at that  
 25 time. The representation was terminated by Conversant.

26 14. On July 5, 2013, Cisco filed a second amended complaint in the Delaware action,  
 27 adding several claims, including a civil claim under the Racketeer Influenced and Corrupt  
 28 Organizations Act, 19 U.S.C. § 1961 *et seq.*

1       15. On information and belief, Cisco settled its lawsuit with Conversant in late  
 2 March/early April 2014, and the Delaware court granted the parties joint motion to dismiss the  
 3 case with prejudice on April 17, 2014.

4       16. On March 20, 2014, three weeks before the Delaware Action was dismissed,  
 5 Hogan Lovells was contacted, through undersigned counsel, by newly-retained counsel for  
 6 Conversant, William T. Reid III of Texas-based law firm of Reid, Collins, & Tsai LLP. Mr. Reid  
 7 stated that Conversant was planning to assert a professional negligence claim against Hogan  
 8 Lovells arising out the firm's representation of Conversant in the ITC Investigation and Delaware  
 9 Action. Mr. Reid went so far as to outline tens-of-millions of dollars in purported damages  
 10 attributable to Hogan Lovells and fees that it intended to claw back. Over the course of multiple  
 11 discussions, Mr. Reid made clear that Conversant intends to file a complaint against Hogan  
 12 Lovells in court, unless a resolution can be reached, despite his awareness of the signed Retainer  
 13 Agreement and arbitration clause.

14       17. In compliance with Section 10 of the Retainer Agreement, Hogan Lovells has  
 15 simultaneously filed and served a Demand for Arbitration with the American Arbitration  
 16 Association (as required by the Retainer Agreement), asserting that Conversant's threatened  
 17 professional negligence claim is barred by the applicable statute of limitations.

18       18. In sum, Conversant has directly threatened legal action against Hogan Lovells  
 19 arising out of Hogan Lovells' representation of Conversant pursuant to the Retainer Agreement,  
 20 has stated that the arbitration clause in the Retainer Agreement does not require arbitration of this  
 21 dispute, and has threatened to file a complaint against Hogan Lovells in court. Conversely, in  
 22 compliance with the Retainer Agreement, Hogan Lovells has filed and served a Demand for  
 23 Arbitration with the American Arbitration Association, seeking, among other things, a finding  
 24 that Conversant's threatened professional negligence claim is barred by the applicable statute of  
 25 limitations. Therefore a real dispute exists between the parties regarding Conversant's claim of  
 26 professional negligence, including whether the claim is time barred, as Hogan Lovells asserts.  
 27 Hogan Lovells believes and asserts that all of these disputes must be resolved by arbitration  
 28 pursuant to the parties' Retainer Agreement.

## **FIRST CAUSE OF ACTION**

## Application to Compel Arbitration under the FAA

19. Hogan Lovells hereby incorporates paragraphs 6 – 18 by reference.

20. The Federal Arbitration Act, 9 U.S.C. § 1, *et seq.*, requires this Court to compel arbitration of a dispute if the parties entered into a valid and enforceable arbitration agreement, and the arbitration agreement encompasses the claims at issue.

21. The arbitration clause in the Retainer Agreement is valid and enforceable, as it was part of a freely bargained agreement between two sophisticated parties.

22. The arbitration clause in the Retainer Agreement covers the claims threatened by Conversant, which sound in professional negligence. By its terms, the Retainer Agreement requires arbitration of “any disputes or claims of any type or nature with respect to services rendered” by Hogan Lovells to Conversant. This language covers all claims arising out of or related to Hogan Lovells’ representation of Conversant, including any claims for legal malpractice, professional negligence, or breach of fiduciary duty.

23. Hogan Lovells has been aggrieved by Conversant's refusal to acknowledge the validity of the parties' written agreement for arbitration.

24. An order from this Court—compelling arbitration of any claim(s) by respondent against Hogan Lovells arising out of or relating to Hogan Lovells’ legal representation of Conversant, and declaring that the parties’ agreement to arbitrate is valid and covers any such claims—is necessary to protect Hogan Lovells’ rights under the parties’ agreement to arbitrate.

## **PRAYER FOR RELIEF**

Wherefore, Hogan Lovells prays for:

An order compelling arbitration of any claim(s) by respondent against Hogan Lovells arising out of or relating to Hogan Lovells' legal representation of Conversant as part of the arbitration proceeding initiated by Hogan Lovells on May 13, 2014 (concurrently with filing of the instant petition) relating to the same representation;

A declaratory judgment that the arbitration provision in the parties' Retainer Agreement is valid and enforceable, and covers any dispute arising out of or relating to Hogan Lovells' legal

1 representation of Conversant;

2 Costs, attorneys' fees, and interest thereon, as provided by law; and

3 Any such other relief as the Court deems proper.

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5 Dated: May 13, 2014

KEKER & VAN NEST LLP

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7 By: /s/ Elliot R. Peters  
8 ELLIOT R. PETERS  
9 KHALI J. TILLERY  
10 BEN ROTHSTEIN

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12 Attorneys for Petitioner HOGAN  
13 LOVELLS US LLP

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